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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

BEN MABRY,

Defendant and Appellant.

E071635

(Super.Ct.No. FWV17002050)

OPINION

APPEAL from the Superior Court of San Bernardino County. Elia V. Pirozzi,
Judge. Affirmed.

Arielle Bases, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

I

INTRODUCTION

In April 2017, defendant and appellant Ben Mabry entered a residence and stole several items of personal property, including some watches and electronics. After the trial court denied defendant's motion to suppress evidence, a jury trial found defendant guilty of first degree residential burglary (Pen. Code, § 459). Defendant was sentenced to the middle term of four years in state prison with 173 days of credit for time served. Defendant was also ordered to pay \$3,879.70 in victim restitution. Defendant appeals from the judgment. Based on our independent review of the record, we find no error and affirm the judgment.

II

FACTUAL BACKGROUND

On April 12, 2017, Ruben F., Jr. (Ruben Jr.), was living in a condominium with his father, Ruben F., Sr., his older stepbrother, his three younger brothers, and his stepmother. Ruben Jr. came home from work that day at around 1:45 p.m. and noticed his television was pulled out and his PlayStation was gone. Ruben Jr. also observed that the front door was unlocked, there was a chair leaned up against the door, and a broken window into the living room with a missing screen. Ruben Jr. thereafter immediately called his father, and then called 911.¹ Eventually, the family determined that multiple PlayStations, PS3 and PS4 games, gaming controllers, an Amazon portable speaker, a

¹ At the time of trial, the audio recording of the 911 call was played for the jury.

JBL portable speaker, Mexican currency, a 1700 collectible coin, Fossil watches, Dre Beats headphones, two pairs of wireless headphones, glasses, sunglasses, an Apple Ipad, an older iPhone, and a GoPro were missing.

Later that night, Ruben Jr. checked online to determine if any of the stolen property was listed on Facebook in local selling and trading places, as well as apps called OfferUp and Letgo. OfferUp allows people to sell merchandise online locally. After searching the OfferUp app, the next day, on April 13, 2017, Ruben Jr. noticed a post for a PlayStation 4, PlayStation controllers, and an Amazon speaker being sold within a quarter mile of his home. Ruben Jr. thereafter started a conversation with the seller regarding the sale of these items.

At some point, Ruben Jr. and the seller arranged to meet at a nearby convenience store, a three-minute walk from Ruben Jr.'s home. The seller informed Ruben Jr. he would be driving a red Prius and that he would be wearing all black with red Jordan shoes. After Ruben Jr. arranged to meet the seller, he contacted a detective with the Ontario Police Department and requested law enforcement come with him to the convenience store.

When Ruben Jr. arrived at the convenience store at around 9:00 p.m., he met with Detective Barron. The seller, later identified as defendant, was there wearing all black clothing and red tennis shoes and carrying a backpack. Defendant was waiting outside the convenience store, and law enforcement from the Ontario Police Department approached him. At some point, Detective Barron came up to Ruben Jr. with an Amazon

speaker and asked Ruben Jr. if it was his device. Ruben Jr. confirmed the Amazon speaker belonged to him and showed Detective Barron the box for the Amazon speaker. The serial number on the Amazon speaker matched the serial number on the box for the speaker. Later, Ruben Jr. was able to connect the Amazon speaker to his Wi-Fi at home. Detective Barron also recovered a JBL speaker, four Fossil watches, a pair of aviation sunglasses, and some Mexican currency from defendant's backpack. In addition, Detective Barron recovered \$202 in U.S. currency from defendant's person.

After determining defendant's address, Detective Barron discovered that defendant's address was located a tenth of a mile from the victim's residence. Detective Barron also learned that defendant was on felony probation. Detective Barron and other officers thereafter went to defendant's residence and spoke with defendant's mother, who said that defendant slept in the living room. In the living room, law enforcement recovered two PS4 controllers and nine PS4 games. Furthermore, a fingerprint identified as defendant's was lifted from the living room window of Ruben Jr.'s home.

III

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to

conduct an independent review of the record. We offered defendant an opportunity to file a personal supplemental brief, and he has not done so.

An appellate court conducts a review of the entire record to determine whether the record reveals any issues which, if resolved favorably to defendant, would result in reversal or modification of the judgment. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Feggans* (1967) 67 Cal.2d 444, 447-448; *Anders v. California, supra*, 386 U.S. at p. 744; see *People v. Johnson* (1981) 123 Cal.App.3d 106, 109-112.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

IV

DISPOSITION

The judgment is affirmed.

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CODRINGTON

J.

We concur:

MILLER

Acting P. J.

SLOUGH

J.